IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6321 OF 2004

Ibrahim A. Shaikh .. Petitioner

versus

Smt.Vatsala G. Ghorpode .. Respondent

...

Mr. Shetty for the petitioner.

CORAM : D.G. KARNIK, J

DATED : 30th August 2004

P.C:-

1. Heard the learned counsel for the petitioner.

2. The petitioner challenges a part of the order of the District Judge dated 16th April 2002 rejecting the petitioners claim for possession on the ground of non user of the suit premises by the respondent.

3. The only evidence that was adduced by the petitioner before the trial Court for proving non user

of the suit premises was that the notice was served on the respondent at a different address. This service at the most would prove that the respondent was available at a different address when the suit notice was issued. That does not prove continuous non user of the suit premises for a period of more than six months immediately preceding the suit.

4. No satisfactory evidence was adduced by the petitioner to prove that respondent was not residing in the suit premises continuously for a period of six months immediately prior to the suit.

5. Being a finding of fact supported by reasons, it cannot be interfered with in exercise of a writ jurisdiction.

Hence, petition is rejected.

D.G. KARNIK, J